

**Minutes of The Florida Bar - Criminal Law Section
Executive Council - Midyear Meeting – January 17, 2009**

- I. CALL TO ORDER - 10:05am - meeting was called to order by the Chair, Donnie Murrell. Welcome announcements were made. The Agenda was distributed.

Roll call - attending: Murrell, Snurkowski, Lowenthal, Blake, Finnell, Harris, Hersch, Hess, Hugentugler, Imperato, Laeser, Lantz, Polin, Sepler, Silvershein, Swartz, Tannebaum, Tragos, Vose, Weatherby, Zacks

Excused absences: Porter, Kainen, Buzzell, Dillinger, Duncan, Fingerhut, McDonnell, Turner, Walsh, Zedalis

Not present: YLD representative Sean Desmond

APPROVAL OF MINUTES - The minutes of the meeting of September 12, 2008, were approved unanimously.

II. REPORT AND COMMENTS FROM THE CHAIR

Donnie Murrell reported that the Section has been very active since our September meeting.

First, there has been an e-newsletter distributed every month except January. It seems to be working well, there is positive feedback, and it is popular with the section membership. All board members and section members are invited and requested to send material for the e-newsletter, including articles, information on legislation, any matters of interest for the section membership.

Second, the Section participated in an amicus brief in the Sarasota case involving the Statewide Prosecutor's indictment of gang members, and the court's appointed as defense counsel, of an attorney who was not on the approved appointment list, at a specifically-set fee. The Criminal Law Section participated in an amicus brief with the ACLU and FAWL, taking the position that it is tantamount to involuntary servitude, and is unconstitutional for any number of other significant, fundamental reasons. The case remains pending, and the defendant remains in custody while the appeal on the issue of counsel is pending.

Third, the Chair was pleased with the fact that The Florida Bar was extremely cooperative – we received approval from The Bar in less than 48 hours. If we need something the Bar is receptive and will participate and support us. If we speak up when we need something, we may expect to receive the support and assistance that we need.

Fourth, and finally, the Budget Summit was completed in December after five monthly meetings starting in August. They did not accomplish everything, but it was gratifying that there was progress. Hank Coxe was invaluable. There was coverage for every meeting. The Bar's lobbyist was involved. Our side was heard – they learned about problems that funding cuts caused for prosecutors, public defenders, and criminal courts, such as understaffed and unstaffed courtrooms, PD's and SAO's having to lay off lawyers and support staff. Whether or not they care, at least now they know. We got people moving. Buddy Jacobs made it clear that the Bar had to do something. If the

court system is permitted to decay, the impact will spread far and wide eventually affecting everybody in the wallet. TFB is having a Budget Summit today (same time as this meeting), with an economist to explain that funding of the court system impacts the entire state – not just the criminal court system – but will have state-wide impact. In the Florida Legislature, Rod Smith supports us – and in the Special Session, the court system was cut just 1.25 %, whereas other agencies were cut 4%. It helps to have the clout of TFB working with us – it was a victory.

III. TREASURER REPORT & BUDGET

We have _____ in the treasury. Paige Graham presented and explained the proposed budget. George Tragos asked why we have a deficit of \$79,000 for the year.

Paige explained that we are still in the year. The loss is primarily due to our investment allocation in the stock market, and all of the sections are having this problem. But also we have fewer section members, and our budget is lower. The loss is a floating number. Right now we don't know if it is accurate, or just a paper number. It is based on how things are flowing, and likely may not be so grim at the end of the year. It is a "stock-driven" number. Paige explained that the Fla Bar administrative fee was adjusted last year so the Section should get more money back and the final number may actually go up, and not down. Additionally, our total from CLE may increase after the Criminal Law Update Course is presented in April.

Paige also said that our PPD program contribution was greater than allocated last year, so that is a big factor in this deficit budget. Les Hess noted that the Executive Council voted last year to fund scholarships. Looking at Tab 4 of the proposed budget, if we continue to contribute these amounts to PPD, and we're still at a loss for the 09-10 year, then we could lose another \$79,000 for the following year as well.

The Chair asked whether we are operating within the budget that we control. Les Hess asked how we operate within the budget that we voted for. Paige said that we are in a \$63,000 deficit. Les asked why we have a deficit, do we need to change something, and are our expenses out of line? Paige explained that the problems in this year's budget shortfall are (1) investment loss, (2) delay in the seminar, and (3) fewer section members.

Paul Zacks said we did not know that we would have to provide an additional \$21,000 in additional expenses for the PPD program. Paul asked whether the section would provide scholarships again this year, because they are important. George Tragos asked whether the \$46,000 in expenses includes the \$21,000 for PPD scholarships. Paige said that it does not. Les noted that the 08-09 budget was under \$58,000, but it did not include PPD funding. Paige said that the Section paid \$31,000 in expenses to run the program.

The \$51,000 PPD expense for 2008-09 does include scholarships, but not the \$25,000 matching fund contribution to TFB Endowment. The line item does not include the contribution to TFB Endowment. Paul Zacks said that PPD has changed to a different hotel this year, and thus expenses should be lower.

Les Hess suggested that in the future our Endowment contribution should be a separate line item every year that we put in \$25,000 matching funds. Les made a motion for a separate line item for the matching funds.

George Tragos asked if we must make the \$25,000 matching funds Endowment contribution every year. We cannot afford it. No one wants to cut funding, but we cannot continue to operate at this kind of deficit. Everybody must cut back. We cannot have a \$50,000 deficit. The Chair reminded everyone that we want to receive those TFB matching funds. Tragos expressed the Section will lose \$75,000 in real dollars this year. Paul Zacks stated the PPD program expenses will be lower this year, and the shortfall is not due entirely to the expense of the program.

Les Hess repeated his motion for a separate line item for the \$ 25,000 annual contribution to TFB Endowment for PPD. Right now it's not even in the budget. The motion was seconded and passed unanimously.

George Tragos expressed concern for the future since an actual loss of \$50,000 is irresponsible. The Chair also noted that we paid \$10,000 for a legislative consultant, a new expense we did not previously have. The Chair said that it is imperative to adopt a budget today - so we must decide what can be eliminated and what is absolutely necessary.

Jeff Harris inquired why we have investments in stocks. Paige explained that is handled by TFB, the section does not do it alone. The Chair added that the section has a "nest egg" and the Bar invests it for us. David Rothman provided background - for 10 years TFB has made money. The Bar has accounting investment groups that are carefully vetted every year. TFB does not micro-manage – that just does not work well. Jeff Harris asked whether we have a fiduciary responsibility. David Rothman said, under these circumstances no, we don't.

Brian Tannebaum said that we need to increase membership. If State Attorney and Public Defender offices paid section dues it might increase membership. Bill Vose said most offices don't and if they did pay dues, they will not be able to afford it any longer. George Tragos said that most of the section membership is made up of private defense lawyers. Susan Hugentugler mentioned that it might help if members could pay section dues on-line but TFB website will not allow separate payment of section dues on-line, check only. Paige said they are looking into it, but the problem is for every credit card, the Bar is charged a \$5.00 fee, and they keep an administration fee. Paige and Donnie will confer on this.

Paige indicated the revenue numbers are conservative and higher on expenses because we would rather have a low prediction and a more favorable outcome.

IV. THE BUDGET AMENDMENT AND MODIFYING, REDUCING, AND PASSING THE BUDGET

The Budget Amendment at Tab 3 – Les Hess moves to adopt the amendment. Seconded by Paul Zacks. Passed unanimously.

We now have to vote for a 2009-10 budget. The Chair goes through each item in the budget to determine what can be eliminated: At Tab 4 –

Item 84006 – the printed and mailed newsletter – the electronic newsletter is FREE and is sent to all section members at no cost to the section. George Tragos is concerned that we are not getting our newsletter out to judges who are not section members. Paige said that we can make a

list and send them the electronic newsletter. Unanimous decision to eliminate \$5,000 for newsletter.

84001 Postage – we need

84002 Printing – we need

84422 Website – we need

84501 Legislative Consultant – we need

Item 84003 – Officers Office expense - \$500 – eliminated unanimously

Item 84205 – Section Service Program – reduced to \$1,000 – unanimous

Item 84202 – Annual Meeting - \$10,000 – for lunch, space, food, refreshments – reduced/modified to \$7,500 – unanimously

Item 84208 – Closing Argument Project – not funded - unanimously

Item 84209 – the Retreat – not funded – unanimously

Item 84210 – the Federal Judicial Roundtable – not funded – unanimously

Item 84302 - Scholarships (for NIDA & Oxford)

Ann Finnell – suggested reducing to \$2,500

Abe Laeser – suggested reducing to \$3,000

George Tragos – we don't need them at all

Reduced/modified to \$2,500 unanimously

Item 84503 Legislative travel – we agreed to pay Donnie Murrell's expenses – but he waives reimbursement – so not funded – unanimously

Item 84701 - Council of Sections – That's me (Sheryl) – requires an extra day at the Bar Convention – maybe we should keep this \$300.00 in the budget

Item 84921 – Presidential funding – not funded – unanimously

Paige noted that we have two line items to approve – the contribution to TFB Endowment, and the PPD expense and scholarship

George Tragos suggested that the motion concerning the \$21,000 in scholarships should be taken up at a future meeting when we see how we are doing financially – Les Hess accepts the amendment to the motion

Motion by Les Hess to adopt the 09-10 budget as it is in Tab 4, with the foregoing changes – and without the \$21,000 for scholarships.

Item 85055 – Contribution to PPD is reduced by \$20,000 – it is now \$25,000 (rather than \$45,000). Second by Stan Blake

Call the question – would be unanimous but for one NAY – George Tragos will not vote for a negative budget - budget passes

2009 JUDICIAL LUNCHEON SPONSORSHIP – unanimously voted against – unfunded

Discussion of 2009 Award Luncheon of Criminal Law Section: we had a Special Guest - The Chair of the Trial Lawyers Section of TFB, Frank Bedell, grandson of Chester Bedell, invited us to combine our Selig Goldin Award Luncheon on Friday afternoon of the Annual Meeting with the Trial Lawyers luncheon in order to promote better attendance for both. For the past 21 years the Trial Lawyers Section luncheon has had impressive, “heavyweight” speakers on the Independence of the American Lawyer. Mr. Bedell explained that their speakers often address issues and topics that are more closely related to criminal practice and constitutional rights, than with civil litigation. Many times, they have a small attendance – as we do for our luncheon. Until 10 years ago we had a joint luncheon. Since we started having separate luncheons, there has been a decline in attendance (for both sections’ luncheons). They wish to increase attendance at their luncheon, as we do. At a combined luncheon we would give our Selig Goldin award, the Trial Lawyers would present their speaker (in future years we will have input in speaker selection – this year the speaker already has been selected), and the Trial Lawyers recognize their newly Board Certified Lawyers – we could do that too if we want too. The 2009 speaker is Martin Dyckman, formerly editor of the St. Petersburg Times, and author of “A most Disorderly Court.” Or Disorder in the Courts??? a book about problems in the Florida Supreme Court in the 1970’s

Les Hess said it was a great idea, our objectives are similar. The Chair said we can iron out the details. Brian Tannebaum confirmed that we will give our Selig Goldin award at the luncheon. Sheryl Lowenthal said let’s do it. Sometimes our award winner is our speaker, but some years we give our award and also have a different speaker. Sounds like a good idea.

Tragos made motion to have a combined luncheon with Trial Lawyers Section. Many seconds. Motion passed unanimously.

V. COMMITTEE REPORTS

Communications/newsletter - Carolyn Snurkowski – all is going well

CLE-Education – Scott Fingerhut is absent

Ken Swartz reported that the Advanced Federal Practice program on January 15th was a HUGE success – twice the attendance as last year – we had so many walk-ins that we ran out of written materials, and had to order more refreshments – speakers were excellent and outstanding.

Paige reported that the Masters of DUI program was ongoing as our meeting was taking place and also was very successful – with greater attendance than anticipated, and more than last year – CLE is doing well and making money not only on live programs, but also on the after-sales. The Florida Criminal Law Update is scheduled for April 16th in Tampa, and will be our Section’s first webcast program.

PPD – Paul Zacks reported that program expenses should be significantly lower this year because we are going to a less-expensive hotel – it is nicer, however, and they are very friendly and accommodating – also the program will be one day shorter. The exact numbers from years past are not available, but Paige is making it more accountable.

Closing Argument Update Manual – Doug Duncan – is absent, but Chair Murrell said that he has prepared a complete update of the manual, it is always a great program, and although we unfunded it, we will make it available for distribution – perhaps on our website

PPD funding – Brian Tannebaum is tirelessly still trying to raise funds – which is very difficult right now given the economy – but he continues to give it his all

Selig Goldin – Harvey Sepler – the Committee advertised in TFB News, sent out a blast e-mail, announced in the newsletter – and received two nominations – Judge O.H. Eaton, Jr., Sanford, Florida, and Earl D. Loveless, Assistant Public Defender, Pensacola.

There was discussion of revising committee rules and procedures for next year to allow the committee to make additional nominations. Bill Vose suggested that the Committee have at least three members, from different areas of the State. This issue will be addressed at the September meeting.

Following a vote, Judge Eaton was selected as this year's Selig Goldin award recipient.

VI. DeeDee Costello's resignation from Executive Council – replacement ?

Unfortunately, she had to resign due to budget cutbacks – can no longer afford to travel to meetings. Abe Laeser suggested that we just wait until June to fill the vacancy on the Executive Council – everyone agreed. The Chair will write to thank her for her service to the Section. Les Hess suggested that the letter express that it is with regret that the Executive Committee accepts her resignation. It shall be done.

VII. LIAISON REPORTS

Rules Committee – Scott F is not here – Bill Vose has not been on the committee for 2 years- no report

Jury Instructions – Michael Weatherby – last month was his last month on the committee – no report

Young Lawyers – Sean Desmond – absent – no report

VIII. NEW BUSINESS

Tony Musto – working on Law Review article – contact him with criminal law issues

Jeff Harris – should we be involved in Article V appointments of the Public Defender screening process? Right now it is done by a clerk and the judge has no say in screening to decide whether the defendant is eligible for a PD. PD's are concerned and judges are upset. System should be changed so judges make the decision.

Abe Laeser – it didn't work well in the past.

Chair Murrell – bring us some legislation or a proposal to review.

Stan Blake – not really a problem – I can inquire if I have concerns

Ann Finnell – the judge always may make inquiries into indigency

Bill Vose – it is an area we should be concerned with – let's take it up at a future meeting

George Tragos – should the Section take a position on the ethical rule concerning whether a defense lawyer has an obligation to disclose that his client gave a false name (Rule 90-6) ?.

Joel Silvershein said NO – it is not appropriate for the Section to take up the matter. Abe Laeser – it's too political – the sides are too polarized.

George Tragos - there is a pending bill to eliminate depositions in third degree felonies – is this appropriate for the Section to consider?

Stan Blake recommends referral to the legislative committee

Jeff Harris: it's a due process issue - we should discuss it

Abe Laeser - it's a money issue that we cannot resolve – the Legislature does not want to spend money for these depositions –

The Chair - but spending money for depositions makes the system work correctly - we've been arguing that everybody needs more money – prosecutors, defenders, courts, law enforcement – depositions in 3rd degree felony cases do help the system work the way it should

Jeff Harris – for a 3rd degree felony, the defendant is facing up to 5 years in state prison – we cannot acquiesce – it bears discussion - 3rd degree felonies are significant – we can't just waive depositions in these cases – next it will be second degree – they won't stop there

Ann Finnell – how about if we insisted on subpoena power to talk to witnesses – without the expense of a court reporter

Carolyn – this is an important topic to discuss – our concerns should be communicated – the failure of those in power to understand the reality of what goes on in the real world creates more problems

Brian Tannebaum – they're in session – this bill has been filed

Jeff Harris – we need to do something NOW –

Brian T – the bill reads NO depositions for 3rd degree felonies – and NO Exceptions for Habitual Offender, or for good cause – if discovery is complete – no depositions

Abe Laeser – motion – that the Section OPPOSE the legislation

Jeff Harris – seconded

Passed unanimously

Other new business?

Vose – 2009 judicial luncheon ? we struck it

Motion to adjourn. The meeting was adjourned at 12:05pm

Respectfully submitted,

Sheryl J. Lowenthal
Secretary

On January 19, 2009